

State of New York
Commission on Judicial Conduct

In the Matter of the Proceeding Pursuant to Section 44,
subdivision 4, of the Judiciary Law in Relation to

DONALD L. BOUGHNER,

a Justice of the Town Court of Riga,
Monroe County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Hon. Fritz W. Alexander, II
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
Hon. Isaac Rubin

APPEARANCES: Gerald Stern for the Commission
Walter M. Pelkey for Respondent

The respondent, David L. Boughner, a justice of the Town Court of Riga, Monroe County, was served with a Formal Written Complaint dated April 16, 1980, alleging misconduct with respect to nine traffic cases. Respondent filed an Answer on May 29, 1980.

By order dated June 30, 1980, the Commission designated W. David Curtiss, Esq., referee to hear and report proposed findings of fact and conclusions of law.

The hearing was held on October 17, 1980, and the referee filed his report to the Commission on March 10, 1981.

By motion dated June 26, 1981, the Administrator of the Commission moved to confirm in part and to disaffirm in part the referee's report, and for a determination that respondent be admonished. Respondent cross-moved on July 22, 1981, to disaffirm in part and to confirm in part the referee's report and for dismissal of the Formal Written Complaint. Oral argument on the motions was not requested.

The Commission considered the record of this proceeding on September 22, 1981, and makes the following findings of fact:

1. Charge I: On January 16, 1977, respondent communicated with LeRoy Town Court Justice John Aramino, seeking special consideration on behalf of the defendant, who was charged with speeding in People v. Donald D. Brown, a case then pending before Judge Aramino.

2. Charge II: On June 6, 1977, respondent reduced a charge of speeding to failing to obey a traffic control device in People v. Dale W. Aycock as a result of a letter he received from Groveland Town Court Justice Donald Barber, seeking special consideration on behalf of the defendant.

3. Charge VII: On November 12, 1973, respondent reduced a charge of speeding to driving with an unsafe tire in People v.

Gary L. Myrick as a result of a communication he received from Chili Town Court Justice Neil Cramer, seeking special consideration on behalf of the defendant.

4. Charge IX: On May 20, 1974, respondent accepted the forfeiture of bail in lieu of further prosecution of a charge of speeding in People v. John E. Kerekavich as a result of a letter he received from Ogden Town Court Justice Roy J. Burley, seeking special consideration on behalf of the defendant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charges I, II, VII and IX of the Formal Written Complaint are sustained and respondent's misconduct is established. Charges III through VI and Charge VIII of the Formal Written Complaint are not sustained and therefore are dismissed.

It is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to grant special consideration to a defendant. It is also improper for a judge to accede to such requests from judges.

By requesting special consideration of another judge for the defendant in a traffic case, and by granting such requests from other judges, respondent violated the Rules enumerated above.

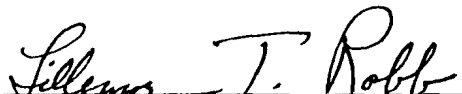
By reason of the foregoing, the Commission determines that the appropriate sanction is admonition.

All concur, except Mrs. DelBello dissents only as to Charges III through VI of the Formal Written Complaint and votes that the above charges be sustained.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct, containing the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

Dated: November 13, 1981


Lillemor T. Robb, Chairwoman
New York State Commission on
Judicial Conduct